IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 731 OF 1996

M/s. Unifoam Private Limited ..Appellants

versus

S. S. Tinnaikar & Ors. ..Respondents

Mr. Girish Desai, Ms. Geeta Shastri and Mr. Amit Shastri for the Appellants.

None for Respondent Nos. 1 and 2.

Mr. R. J. Ghag for the Respondent No.3.

CORAM : D. G. DESHPANDE,J.

DATE : 27TH JANUARY,2005

ORAL ORDER :

1. Heard learned counsel for the Appellants. Nobody is present for Respondent Nos. 1 and 2 - Bombay Municipal Corporation. Counsel for the Respondent No.3 is there, but he has no role to play in this Appeal.

2. It is surprising to note that those Appeals are against the Municipal Corporation for Greater Mumbai, they were adjourned from time to time, but nobody is appearing for the Corporation.

3. In any case counsel for the appellants submitted that the matter requires to be remanded back to the appellate court for considering the evidence adduced by the parties and if necessary with liberty to lead evidence. He also relied upon the Judgment of the Supreme Court reported in **2003 (6) SCC 315 Municipal Corporation of Greater Mumbai & Another vs. Kamla Mills Ltd.**

4. In the circumstances, the prayer appears to be reasonable, therefore impugned order is set aside. The matter is remanded back to the Small Causes Court deciding the Municipal Appeals against taxation or rateable value for decision according to the law. The parties will be at liberty to adduce evidence, if they so desire. Counsel for the Appellants agrees that till the matter is heard and decided finally, they will be paying taxes on the basis of the rateable value fixed by the court in the impugned order, that will be subject to the final outcome of the matter. Whatever amount has been deposited that will be taken into consideration regarding payment. This order be immediately communicated to the concerned court. Concerned court to decide the matter on or before 5.5.2005. Certified copy expedited.

27/1/2005 (D.G. DESHPANDE, J.)